

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Marvis Josefina Montilla De Diaz,

Petitioner,

-v-

Todd M. Lyons, Acting Director of US ICE;
Miguel Vergara, San Antonio Field Office
Director, US Immigration and Customs
Enforcement; Daren K. Margolin, Director of
the Executive Office for Immigration Review;
Warden, Dilley Immigration Processing
Center.

Respondents.

Case No: 5:25-cv-1809

**Petition for Writ of Habeas Corpus
Under 28 U.S.C. § 2241**

INTRODUCTION

Petitioner Marvis Josefina Montilla De Diaz is an asylum seeker from Venezuela who was unlawfully detained by Respondents on October 23, 2025. She is being held subject to mandatory detention without bond after being detained during a mandatory appointment with US Immigration and Customs (ICE). Her detention was without justification or warrant. Petitioner has no criminal history and has been in the United States since approximately September of 2023.

Without intervention by this Court, Petitioner will be indefinitely detained without the possibility of release on bond. For these reasons, she prays that this Court will order her release from her unlawful detention.


JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
3. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, and 28 U.S.C. § 1651 because Petitioner asks this Court to compel Respondents, officers of the United States, to perform their duties owed under 8 U.S.C. § 1226(a).
4. The jurisdiction of this Court is also invoked pursuant to 28 U.S.C. §§ 2201-02 which authorizes the issuance of declaratory judgments.
5. Petitioner seeks costs and fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2) et seq.
6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.


VENUE

7. Venue is proper in this District because Petitioner is detained at the Dilley Immigration Processing Center located at 300 El Rancho Wy, Dilley, TX 78017, which is within the jurisdiction of this District.
8. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.

PARTIES

9. Petitioner is an applicant for asylum who has been unlawfully detained by Respondents. She was assigned alien number A . Petitioner is under the direct control and in the custody of Respondents and their agents.
10. Respondent Todd M. Lyons is the Acting Director of US ICE. Respondent is the legal custodian of Petitioner and has the direct authority to release Petitioner. Todd M. Lyons is sued in his official capacity.
11. Respondent Miguel Vergara is the San Antonio Field Office Director of US Immigration and Customs Enforcement. Respondent is the legal custodian of Petitioner and has the direct authority to release Petitioner. Miguel Vergara is sued in his official capacity.
12. Respondent Daren K. Margolin is the Acting Director of the Executive Office for Immigration Review (EOIR). He has the legal authority to order an immigration judge to provide Petitioner a fair and impartial bond hearing. He is sued in his official capacity.
13. The Warden of the Dilley Immigration Processing Center is sued as the direct custodian of Petitioner. The Warden's name is not publicly listed on any materials that were available at the time of filing. The Warden is sued in his or her official capacity.

STATEMENT OF FACTS

14. Petitioner came to the United States seeking asylum. She entered the United States without inspection or admission on September 4, 2023, and was assigned alien number .
15. Petitioner's immigration proceedings take place within the immigration courts administered by EOIR. Petitioner's application for asylum is pending before EOIR and she is permitted to remain in the United States until a final determination has been made on her case.
16. Following Petitioner's entry to the United States, she was detained for approximately seven days and then released on her own recognizance pursuant to Section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226. *See* Exhibit A.
17. Petitioner was placed in full removal proceedings rather than expedited proceedings. Those proceedings have been pending since at least September 11, 2023. *See* Exhibit B.
18. After her release, Petitioner complied with all conditions of her release. She attended all hearings in immigration court and all appointments with Respondents.
19. Petitioner was detained by US Immigration and Customs Enforcement officers on October 23, 2025. At the time of her detention she was attending a mandatory check-in.
20. Respondents assert that Petitioner must be detained pursuant to 8 U.S.C. § 1226, which is reserved for noncitizens in expedited removal proceedings.
21. Petitioner remains detained today. *See* Exhibit C.

CLAIMS FOR RELIEF

COUNT I

Violation of Fifth Amendment Right to Due Process

22. The above paragraphs are realleged and incorporated herein.
23. The Department of Homeland Security is detaining Petitioner under “mandatory detention” authority reserved for aliens who are in the process of entering the United States, 8 U.S.C. § 1225.
24. Respondents have determined that all individuals like Petitioner are ineligible for bond and must be detained due to a recent change in policy. The Executive Office for Immigration Review issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in Petitioner’s exact circumstances. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision is contrary to the previous interpretation of the relevant statutes which has persisted for more than two decades and through various administrations.
25. Petitioner was not arriving in the United States at the time of her detention; she had been in the United States for more than two years and she was not seeking admission. Her detention is unlawful because she is being subjected to mandatory detention provisions which did not apply to her at the time of her detention.
26. Respondents’ previously informed Petitioner that she was detained pursuant to INA § 236 (8 U.S.C. § 1226). *See* Exhibit A. As such, Petitioner should be eligible for immigration bond under 8 U.S.C. § 1226(a) and release from detention because she is not properly subject to mandatory detention.

27. The unlawful detention of Petitioner is a violation of her rights under the Fifth Amendment of the US Constitution.

COUNT II

Violation of Petitioner's Order of Release

28. The allegations in the above paragraphs are realleged and incorporated herein.
29. Regulations at 8 CFR § 236.1(c)(9) and (g) require specific procedures to release or revoke the release of an individual. This regulation also limits the authority to make these decisions to specific enumerated officers.
30. At the time Petitioner was detained, Petitioner's release on her own recognizance had not been lawfully revoked.
31. Respondents violated the provisions at 8 CFR § 236.1(c)(9) because they did not make individualized findings specific to Petitioner's circumstances.
32. Respondents violated the provisions at 8 CFR § 236.1(c)(9) because Petitioner's custody determination was not rendered by one of the specified officers.
33. Petitioner's detention is unlawful because the Department of Homeland Security violated the regulations and procedures at 8 CFR § 236.1(c)(9).
34. This unlawful detention and violation of existing regulations also violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Petitioner respectfully asks that the Court:

- A. Assume jurisdiction over this matter;
- B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- C. Order that Respondents not transfer Petitioner from the Western District of Texas;
- D. Order that Respondents not remove Petitioner from the United States until this matter has concluded;
- E. Order that Respondents immediately release Petitioner from detention under the same conditions of release that she had prior to her unlawful detention on October 23, 2025;
- F. Order that if Petitioner is detained again in the future she must be provided with a bond hearing pursuant to 8 U.S.C. § 1226(a) before an impartial immigration judge;
- G. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- H. Grant any further relief this Court deems just and proper.

VERIFICATION

On Petitioner's behalf, I, Joseph Krebs Muller, verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted,

/s/ Joseph Krebs Muller

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